Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term 1994

DONALD W. WRIGHT, JACK W. BELL, KENNETH A. BRAUN, HILDEGARDE E. CUTTS, J. E. DUNN, and RALPH STROHMAIER,

Petitioners,

v.

AMF CORPORATION, and AMF VOIT, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of California

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1144(a), preempts common law claims for allegedly failing to pay severance benefits pursuant to a severance benefit plan in effect at the time of the sale of the assets of a corporate employer.

PARTIES

Petitioners Donald W. Wright, Jack W. Bell, Kenneth A. Braun, Hildegarde E. Cutts, J.E. Dunn and Ralph Strohmaier are individuals and were the Plaintiffs - Appellees below. Respondents are informed and believe that petitioner Ralph Strohmaier is deceased. Respondents AMF Corporation ("AMF") and AMF Voit, Inc. ("Voit") are corporations and were Defendants - Appellants below. AMF and Voit's parent company is Minstar, Inc. Voit is a wholly-owned subsidiary of AMF. Neither Voit nor AMF have any non-wholly owned subsidiaries.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES ii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 2

REASONS FOR DENYING THE WRIT 2

I. THE CALIFORNIA COURT OF APPEAL'S DECISION IS IN CONFORMITY WITH THIS COURT'S HOLDING IN *MASSACHUSETTS v. MORASH* 3

II. THIS COURT'S DECISIONS SUBSEQUENT TO *MORASH* HAVE REAFFIRMED THE BROAD SCOPE OF ERISA PREEMPTION 5

III. THE COURT OF APPEAL'S HOLDING THAT AMF'S CORPORATE POLICY 3-17 CONSTITUTES AN ERISA PLAN IS IN CONFORMITY WITH UNITED STATES AND CALIFORNIA SUPREME COURT CASE LAW 8

IV. THE COURT OF APPEAL PROPERLY RECOGNIZED THAT AN EMPLOYER'S UNDERSTANDING OF THE APPLICABILITY OF ERISA DOES NOT AFFECT THE OPERATION OF ERISA AS A MATTER OF LAW 9

V. PETITIONERS' RELIANCE ON *CHAPIN v. FAIRCHILD CAMERA AND INSTRUMENT CORPORATION* IS MISPLACED 10

CONCLUSION 12

TABLE OF AUTHORITIES

Page(s)

CASES

Adams v. AMPCO-Pittsburgh Corporation, 733 F.Supp. 998 (W.D. Pa. 1989) *aff'd. without op.*, 961 F.2d 1566 (3rd Cir. 1992) 11

Adams v. Avondale Industries, Inc., 905 F.2d 943 (6th Cir. 1990) *cert. denied*, 498 U.S. 984 (1990) 6, 11

Allen v. Adage, 967 F.2d 695 (1st Cir. 1992) 11

Awbrey v. Pennzoil Co., 961 F.2d 928 (10th Cir. 1992) 11

Bowman v. Firestone Tire & Rubber Co., 724 F.Supp. 493 (N.D. Ohio 1989) 11

Bradwell v. GAF Corp., 954 F.2d 798 (2nd Cir. 1992) 11

Carpenters So. Cal. Admin. Corp. v. El Capitan Development Co., 53 Cal. 3d 1041, 282 Cal. Rptr. 277 (1991), *cert. denied*, ___ U.S. ___, 112 S.Ct. 430 (1991) 7

Chapin v. Fairchild Camera and Instrument Corporation, 31 Cal. App. 3d 192, 107 Cal. Rptr. 111 (1973) 10, 11

Commercial Life Ins. Co. v. Superior Court, 47 Cal. 3d 473, 253 Cal. Rptr. 682 (1988), *cert. denied*, 490 U.S. 1075 (1989) 7

District of Columbia v. Greater Washington Board of Trade, ___ U.S. ___, 113 S.Ct. 580 (1992) 6

Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109 S.Ct. 948 (1989) 10

FMC Corp. v. Holliday, 498 U.S. 52, 111 S.Ct. 403 (1990) 5, 6

Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 107 S.Ct. 2211 (1987).....8, 9

TABLE OF AUTHORITIES – Continued

Page(s)

Franklin v. Pitney Bowes Inc., 919 F.2d 45 (6th Cir. 1990) 11

Gilbert v. Burlington Industries, Inc., 765 F.2d 320 (2nd Cir. 1985), *summarily aff'd*, 477 U.S. 901, 106 S.Ct. 3267, 91 L.Ed.2d 558 (1986) 9

Gray v. Quaker Fabric Corporation of Fall River, 809 F.Supp. 163 (D. Mass. 1992), *aff'd.*, 6 F.3d 849 (1st Cir. 1993) 6

Holland v. Burlington Industries, Inc., 772 F.2d 1140 (4th Cir. 1985), *summarily aff'd*, 477 U.S. 901, 106 S.Ct. 3267, 91 L.Ed.2d 559 (1986) 9

Ingersoll-Rand v. McClendon, 498 U.S. 133, 111 S.Ct. 478 (1990) 6

Lakey v. Remington Arms Co., Inc., 874 F.2d 541 (8th Cir. 1989) 11

Lesman v. Ransburg Corp., 719 F.Supp. 619 (W.D. Mich. 1989) 11

Marshall v. Bankers Life & Casualty Co., 2 Cal. 4th 1045, 10 Cal. Rptr.2d 72 (1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 601 (1992) 7, 10

Massachusetts v. Morash, 490 U.S. 107, 109 S.Ct. 1668 (1989) 2, 3, 4, 5

Morishige v. Spencecliff Corp., 720 F.Supp. 829 (D. Hawaii 1989) 6

Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 107 S.Ct. 1549 (1987) 2

Scott v. Gulf Oil Corp., 754 F.2d 1499 (9th Cir. 1985) 6

TABLE OF AUTHORITIES – Continued

Page(s)

Sejman v. Warner-Lambert Co., Inc., 889 F.2d 1346 (4th Cir. 1989), *cert. denied*, 498 U.S. 810 (1990) 11

Shaw v. Delta Air Lines, 463 U.S. 85, 103 S.Ct. 2890 (1983) 6, 10

Silvera v. Mutual Life Ins. Co. of New York, 884 F.2d 423 (9th Cir. 1989)..... 6

Southern California Chapter of Associated Builders and Contractors, Ins., Joint Apprenticeship Committee v. California Apprenticeship Council, 4 Cal. 4th 422, 14 Cal. Rptr. 2d 491 (1992)..... 7

STATUTES AND OTHER AUTHORITIES

29 U.S.C. § 1002(1) 3

29 U.S.C. § 1101..... 1

29 U.S.C. § 1051(1) 5

29 U.S.C. § 1081(a) 5

Employee Retirement Income Security Act § 3(1) 3

Employee Retirement Income Security Act § 201(1) 5

Employee Retirement Income Security Act § 301(a) 5

STATEMENT OF THE CASE

This is an action for severance benefits. Petitioners, former employees of AMF Voit, Inc. ("Voit"), a wholly owned subsidiary of AMF Corporation ("AMF") (collectively "Respondents"), seek review of the California Court of Appeal's unpublished and unanimous decision affirming the trial court's judgment in favor of Respondents. The underlying action arose out of the sale of the assets of Voit to Reltron Corporation ("Reltron"). Following Reltron's purchase of the assets of Voit as an ongoing business, Reltron offered employment to Petitioners at their previous salaries and Petitioners did not miss any days of work. Each of these Petitioners who, at a later date, were involuntarily terminated from their employment at Reltron received severance benefits which were calculated based upon the entire period of time that those Petitioners were employed at Voit as well as Reltron. Nevertheless, at trial Petitioners claimed that they were entitled to severance benefits from AMF and Voit.

The trial court found as a matter of law and fact that under the provisions of the Employee Retirement Income Security Act, 29 U.S.C. § 1101 et seq. ("ERISA"), Petitioners were ineligible for severance benefits under the terms of AMF Corporate Policy 3-17 (as modified by the Voit General Statement) – the severance benefit plan in effect at the time of the sale of the assets of Voit. Petitioners appealed the trial court's judgment and attempted to challenge the California Court of Appeal's previous determination that Petitioners' claims for severance benefits are governed exclusively by ERISA. The California Court of Appeal again held that Petitioners' state law claims are preempted by ERISA and affirmed in full the

Superior Court's judgment in favor of Respondents. The California Supreme Court denied Petitioners' Petition for Review of the Court of Appeal's decision.

SUMMARY OF ARGUMENT

This case presents no issue appropriate for the Court's exercise of its discretionary jurisdiction. The decision below is correct. In this routine ERISA preemption case, the courts below simply followed this Court's decisions in *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549 (1987), *Massachusetts v. Morash*, 490 U.S. 107, 109 S.Ct. 1668 (1989), and other similar ERISA preemption cases decided by this Court, the California Supreme Court, and other federal circuit courts regarding the wide breadth of ERISA preemption. Review is not needed either to secure uniformity of decision or to settle important questions of law not previously addressed by this Court. The petition for writ of certiorari should be denied.

REASONS FOR DENYING THE WRIT

This case presents no novel question of law. Instead, Petitioners proffer for review the well established proposition that state law claims for severance benefits are preempted by ERISA. The decision of the California Court of Appeal is in complete harmony with this Court's ERISA preemption decisions, as well as California Supreme Court and other federal circuit court decisions

holding that all state law claims under a plan for severance benefits are preempted by ERISA. Further action by this Court is not necessary. There is simply no important question of law to be settled. Moreover, because the Court of Appeal applied the proper rule of law in deciding this case, review of the Court of Appeal's decision is not required to secure uniformity of decision. Petitioners simply seek an opportunity to restate the same factual arguments which have been repeatedly rejected by the courts below.

I.

THE CALIFORNIA COURT OF APPEAL'S DECISION IS IN CONFORMITY WITH THIS COURT'S HOLDING IN *MASSACHUSETTS v. MORASH*

Petitioners mistakenly contend that the Court of Appeal's decision is in conflict with this Court's holding in *Massachusetts v. Morash*, 490 U.S. 107, 109 S.Ct. 1668 (1989). Petitioners erroneously rely on *Morash* for the proposition that severance benefits paid out of the general funds of an employer are not governed by ERISA. In *Morash*, the Court held that ERISA did not preempt a Massachusetts criminal statute concerning a defendant employer's failure to pay accumulated vacation benefits to employees who were terminated. *Id.* at 120, 121. The Court explicitly distinguished severance benefit plans which constitute employee welfare benefit plans under ERISA § 3(1), 29 U.S.C. § 1002(1), from unfunded vacation plans. The Court stated "plans to pay employees severance benefits, which are payable *only* upon termination of employment, are employee welfare benefit plans within the meaning of the Act." *Id.* at 116 (emphasis in original).

Petitioners fundamentally misunderstand the holding and rationale of *Morash*. Petitioners attempt to explain away the language which explicitly contradicts their theory by arguing that this language is mere "dictum." (Petition at 13). Petitioners argue that the rationale underlying the decision in *Morash* is "whether or not the benefit was paid from the general assets of the employer." (Petition at 14). This is simply not so. As the Court of Appeal recognized, this Court's decision is predicated on the fact that, unlike employee welfare benefits governed by ERISA, such as severance benefits, vacation benefits are vested, non-contingent benefits.

> "Because ordinary vacation payments are typically fixed, due at known times, and do not depend on contingencies outside the employee's control, they present none of the risks that ERISA is intended to address. . . . This conclusion is supported by viewing the reference to vacation benefits not in isolation but in light of the words that accompany it and give the provision meaning. . . . The distinguishing feature [of the benefits which constitute employee welfare benefits under ERISA] is that they accumulate over a period of time and are payable only upon the occurrence of a contingency outside of the control of the employee. Thus, for example, plans to pay employees severance benefits, which are payable *only* upon termination of employment, are employee welfare benefit plans within the meaning of the Act." (Citations omitted, emphasis in original).

Morash, 409 U.S. at 115, 116. Additionally, the Court stated "[u]nlike normal severance pay, the employee's right to compensation for accrued vacation time is not

contingent upon the termination of their employment." *Id.* at 119.

The Court's discussion of funded and unfunded vacation benefits arises solely to the extent that the Court holds that only unfunded vacation benefit plans are excluded from ERISA because "beneficiaries of [a funded vacation plan] face far different risks and have far greater need for the reporting and disclosure requirements that the federal law imposes than those whose vacation benefits come from the same fund from which they receive their paychecks." *Id.* at 120. This distinction is inapplicable to severance benefit plans since ERISA's "funding requirements do not apply to welfare benefit plans." *Id.* at 119 (citing ERISA §§ 201(1), 301(a), as amended, 29 U.S.C. §§ 1051(1), 1081(a)).

II.

THIS COURT'S DECISIONS SUBSEQUENT TO *MORASH* HAVE REAFFIRMED THE BROAD SCOPE OF ERISA PREEMPTION

If the *Morash* decision created any doubt as to ERISA's broad preemption of state law related to employee welfare benefit plans, the Court's decision in *FMC Corp. v. Holliday*, 498 U.S. 52, 111 S.Ct. 403 (1990), removed all doubt. In *Holliday*, the Court was asked to decide whether ERISA preempts a Pennsylvania law precluding employee welfare benefit plans from exercising subrogation rights on a claimant's tort recovery. *Id.* at 54, 111 S.Ct. at 405. As in the present case, the ERISA plan involved in the litigation was not insured. *Id.*

In *Holliday*, the Court reaffirmed its prior decision on the breadth of preemption, and made clear that uninsured plans are subject to preemption. The Court stated that a law is preempted if it has "a connection with or reference to such a plan." *Id.* at 58, 111 S.Ct. at 407 (quoting *Shaw v. Delta Air Lines*, 463 U.S. 85, 96-97, 103 S.Ct. 2890 (1983). Similarly, in *Ingersoll-Rand v. McClendon*, 498 U.S. 133, 111 S.Ct. 478 (1990), the Court had no difficulty in concluding that a state law wrongful discharge claim, based on the allegation that the discharge was motivated by an employer's desire to avoid making contributions to an employee's pension fund, was preempted by the broad scope of ERISA. *See also, District of Columbia v. Greater Washington Board of Trade*, ___ U.S. ___, 113 S.Ct. 580 (1992) ("ERISA pre-empts any state law that refers to or has a connection with covered benefit plans . . . even if the law is not specifically designed to affect such plans, or the effect is only indirect.")[1]

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[1] That Petitioners misunderstand the Court's holding in *Morash* is clearly shown by *Adams v. Avondale Industries, Inc.*, 905 F.2d 943 (6th Cir. 1990), *cert. denied*, 498 U.S. 984, 111 S.Ct. 517 (1990). In *Adams*, a suit to recover severance and vacation benefits following the sale of a company, the Sixth Circuit explicitly cited *Morash* for the proposition that "[i]t is now well established that severance benefit plans, such as the one before us here, are welfare benefit plans" under ERISA. *Adams*, 905 F.2d at 947. Similarly, in *Silvera v. Mutual Life Ins. Co. of New York*, 884 F.2d 423 (9th Cir. 1989), the Ninth Circuit reaffirmed that "preemption 'extends to state common-law causes of action as well as regulatory laws.'" *Silvera*, 884 F.2d at 425 (quoting *Scott v. Gulf Oil Corp.*, 754 F.2d 1499, 1502 (9th Cir. 1985)). Like *Adams*, *Silvera* was decided after and relied in part upon *Morash*. *Accord, Gray v. Quaker Fabric Corporation of Fall River*, 809 F.Supp. 163 (D. Mass. 1992), *aff'd.*, 6 F.3d 849 (1st Cir. 1993); *Morishige v. Spencecliff Corp.*, 720 F.Supp. 829, 383 (D. Hawaii 1989).

Moreover, no split of opinion exists between this Court's decisions and California courts' holdings. The California Supreme Court has repeatedly endorsed this Court's interpretation of the broad scope of ERISA preemption. In the California Supreme Court's most recent ERISA preemption decision, *Southern California Chapter of Associated Builders and Contractors, Ins., Joint Apprenticeship Committee v. California Apprenticeship Council*, 4 Cal. 4th 422, 14 Cal. Rptr. 2d 491 (1992) the court stated:

> "ERISA's preemption clause is to be applied expansively . . . ERISA's preemption clause is conspicuous for its breadth establishing as an area of exclusive federal concern the subject of every state law that 'relates to' an employee benefit plan governed by ERISA." (citations omitted)

California Apprenticeship Council, 4 Cal. 4th at 435. *Accord, Marshall v. Bankers Life & Casualty Co.*, 2 Cal. 4th 1045, 10 Cal. Rptr. 2d 72 (1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 601 (1992) (state law claim for improper denial of group health insurance benefits preempted by ERISA despite employer's minimal involvement in plan administration); *see also, Carpenters So. Cal. Admin. Corp. v. El Capitan Development Co.*, 53 Cal. 3d 1041, 282 Cal. Rptr. 277 (1991), *cert. denied*, 112 S.Ct. 430 (1991) (California Civil Code section 3111 which creates liens on real property in favor of trust funds established pursuant to collective bargaining agreements, is preempted by ERISA); *Commercial Life Ins. Co. v. Superior Court*, 47 Cal. 3d 473, 253 Cal. Rptr. 682 (1988), *cert. denied*, 490 U.S. 1075 (1989) (claim for bad faith rejection of insurance claim under California Insurance Code section 790.03 preempted by ERISA).

III.

THE COURT OF APPEAL'S HOLDING THAT AMF'S CORPORATE POLICY 3-17 CONSTITUTES AN ERISA PLAN IS IN CONFORMITY WITH UNITED STATES AND CALIFORNIA SUPREME COURT CASE LAW

Petitioners' assertion that the Court of Appeal's decision that Petitioners' state law claims are preempted by ERISA is at odds with the holding of *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 107 S.Ct. 2211 (1987), is also unavailing. *Fort Halifax* was an action to enforce rights under a Maine statute requiring employers to make a one-time severance payment to employees in the event of a plant closing. The Court held that the Maine statute was not preempted by ERISA because the statute neither establishes, nor requires an employer to maintain, an employee welfare benefit plan. The Court reasoned that "the requirement of a one-time, lump-sum payment triggered by a single event requires no administrative scheme whatsoever to meet the employer's obligations . . . The theoretical possibility of a one-time obligation in the future simply creates no need for an ongoing administrative program for processing claims and paying benefits." *Fort Halifax*, 482 U.S. at 12.

Contrary to Petitioners' assertion, the Court in *Fort Halifax* did not, however, hold that plans to pay severance benefits out of the general assets of a company do not constitute a "plan" under ERISA. (Petition at 19). Indeed, such an argument runs counter to the language of the statute and was explicitly rejected by the Court in *Fort Halifax*:

> "Appellant also argues that its contention that the severance obligation under the Maine statute is an ERISA plan is supported by *Holland v. Burlington Industries, Inc.*, 772 F.2d 1140 (4th Cir. 1985), *summarily aff'd*, 477 U.S. 901, 106 S.Ct. 3267, 91 L.Ed.2d 559 (1986), and *Gilbert v. Burlington Industries, Inc.*, 765 F.2d 320 (2nd Cir. 1985), *summarily aff'd*, 477 U.S. 901, 106 S.Ct. 3267, 91 L.Ed.2d 558 (1986). We disagree. *Those cases hold that a plan that pays severance benefits out of general assets is an ERISA plan. That holding is completely consistent with our analysis above.*" (Emphasis added).

Fort Halifax, 482 U.S. at 16. The decision of the trial court and the Court of Appeal that AMF's Corporate Policy 3-17 (as modified by the Voit General Statement) constituted a severance plan under ERISA is unquestionably correct.

IV.

THE COURT OF APPEAL PROPERLY RECOGNIZED THAT AN EMPLOYER'S UNDERSTANDING OF THE APPLICABILITY OF ERISA DOES NOT AFFECT THE OPERATION OF ERISA AS A MATTER OF LAW

Petitioners also argue that because a former AMF employee was unaware that AMF's severance policy was governed by ERISA, the Court of Appeal erred in finding Petitioners' state law claims are preempted by ERISA. (Petition at 9, 21). This "fact" is simply irrelevant. As the Court of Appeal recognized, ERISA preempts severance benefits plans as a matter of law. Laws apply to every person whether or not they are aware of their provisions.

Moreover, with regard to ERISA, this Court and the California Supreme Court have consistently held that what any party understood with regard to the law under ERISA is irrelevant to its applicability. For example, in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 109 S.Ct. 948 (1989), the Court stated that ERISA was applicable to the interpretation of an unfunded severance plan even though the employer was unaware of the dictates of ERISA. *Firestone*, 489 U.S. at 105. Likewise, the California Supreme Court has held that an employer's knowledge of ERISA is irrelevant to its operation as a matter of law.

> "Our conclusion that [defendant] established and maintained a plan under ERISA is not altered by the fact that [defendant] neither complied with ERISA's requirements nor intended to create an ERISA plan. The test of whether a benefit plan is exempt from ERISA is not one of the employer's motivation."

Marshall, 2 Cal. 4th at 1058 (citing *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 105, 109 S.Ct. 948; *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 107, 103 S.Ct. 2890 (1983)).

V.

PETITIONERS' RELIANCE ON *CHAPIN v. FAIRCHILD CAMERA AND INSTRUMENT CORPORATION* IS MISPLACED

Finally, Petitioners assert that review is warranted because the Court of Appeal's decision is in conflict with *Chapin v. Fairchild Camera and Instrument Corporation*, 31 Cal. App. 3d 192, 107 Cal. Rptr. 111 (1973). (Petition at 11, 29-35). Petitioners' argument is without merit. *Chapin* was decided before the enactment of ERISA and dealt with

state law claims for severance benefits. As the Court of Appeal correctly held, such claims are preempted by ERISA. Thus, *Chapin* is simply inapplicable. Moreover, the Court of Appeal's decision is in complete harmony with the overwhelming majority of courts which have held that under severance plans similar to AMF Corporate Policy 3-17, employees are not eligible for severance benefits when the assets of a company are purchased by another and the employees are retained by the purchasing company.[2]

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[2] For example in *Lakey v. Remington Arms Co, Inc.*, 874 F.2d 541 (8th Cir. 1989), the Eighth Circuit held that terminated employees, immediately rehired by a departing corporation's successor are not entitled to severance pay since the change in employer "caused the employees no lack of work, [and] severance benefits, if granted would simply [be] a windfall . . . " *Id.* at 545. *See also, Allen v. Adage*, 967 F.2d 695 (1st Cir. 1992); *Awbrey v. Pennzoil Co.*, 961 F.2d 928 (10th Cir. 1992); *Bradwell v. GAF Corp.*, 954 F.2d 798 (2nd Cir. 1992); *Franklin v. Pitney Bowes Inc.*, 919 F.2d 45 (6th Cir. 1990); *Adams v. Avondale Industries, Inc.*, 905 F.2d 943 (6th Cir. 1990), *cert. denied*, 498 U.S. 984, 111 S.Ct. 517 (1990); *Sejman v. Warner-Lambert Co., Inc.*, 889 F.2d 1346 (4th Cir. 1989), *cert. denied*, 498 U.S. 810 (1990); *Adams v. AMPCO-Pittsburgh Corporation*, 733 F.Supp. 998 (W.D. Pa. 1989), *aff'd. without op.*, 961 F.2d 1566 (3rd Cir. 1992); *Bowman v. Firestone Tire & Rubber Co.*, 724 F.Supp. 493 (N.D. Ohio 1989); *Lesman v. Ransburg Corp.*, 719 F.Supp. 619 (W.D. Mich. 1989).

CONCLUSION

Review of the California Court of Appeal's unpublished decision is not appropriate. The Court of Appeal's decision that Petitioners' state law claims are preempted by ERISA is in complete conformity with recent United States and California Supreme Court decisions. Additionally, Petitioners raise no issues which this Court has not already conclusively resolved. The petition for writ of certiorari should be denied.

DATED: September 8, 1994

Respectfully submitted,

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